

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

JAMES ALEXANDER AND L.J. NEWSOME      PLAINTIFFS

V.      CIVIL ACTION NO. 3:02CV91-B-B

JOHN W. TAYLOR, JR., INDIVIDUALLY AND  
IN HIS CAPACITY AS CHANCERY CLERK OF  
MARSHALL COUNTY, MISSISSIPPI, AND USF&G

INSURANCE COMPANY      DEFENDANTS

**MEMORANDUM OPINION**

This cause comes before the court upon the defendants' motion to dismiss or, in the alternative, for summary judgment. Upon due consideration of the motion, response, exhibits, and supporting and opposing authority, the court is ready to rule.

Procedural History

This action was filed in the Circuit Court of Hinds County, Mississippi, on June 15, 2001, by James Alexander and L.J. Newsome against John W. Taylor, Jr., the Chancery Clerk of Marshall County, Mississippi, individually and in his official capacity, and USF&G Insurance Company, his surety on the official performance bond. The defendants removed the case to the United States District Court for the Southern District of Mississippi asserting that federal question subject matter jurisdiction was created by the plaintiffs' claims under 42 U.S.C. § 1983 for alleged race discrimination and denial of due process.

The defendants then filed the predecessor to the present motion: the defendants' motion to dismiss or, in the alternative, for summary judgment or, in the alternative, to transfer venue. Judge William Barbour granted the defendants' motion to transfer venue to this court and did not rule on the motions to dismiss or for summary judgment. The parties thereafter supplemented the record with their deposition testimony, which the court has considered. Thus, as the court has examined

matters outside the pleadings, the motion shall be considered as a motion for summary judgment pursuant to Rule 12(c) and Rule 56 of the Federal Rules of Civil Procedure.

#### Facts

On August 30, 1994, plaintiff Alexander purchased twenty-one parcels of real property, and plaintiff Newsome purchased three parcels of real property, all of which are located in Marshall County, Mississippi. The property was purchased for delinquent 1993 *ad valorem* taxes at a tax sale conducted by Marshall County officials. The plaintiffs allege that on August 9, 1995, they paid the 1994 *ad valorem* taxes then owing on the property in order to protect their investment. Subsequently, nine of the parcels of real property purchased by Alexander and all of the parcels purchased by Newsome were redeemed by the record owners. The plaintiffs allege that the chancery clerk, defendant Taylor, failed to collect from the redeeming landowners the amounts paid by the plaintiffs for the 1994 taxes.

The plaintiffs petition for a writ of mandamus directing Taylor to: (1) issue tax deeds on the subject parcels of real property for which they paid 1994 *ad valorem* taxes, or (2) tender payment of the fair market value of the subject parcels of real property, or (3) reimburse them the 1994 *ad valorem* taxes paid on the subject parcels of real property. The plaintiffs also seek a number of declaratory rulings regarding their various rights in respect to the subject property. Further, the plaintiffs bring claims under 42 U.S.C. § 1983 for due process and equal protection violations and allege that the defendants discriminated against them because of their African-American race. Federal question jurisdiction is thereby established, and this matter is properly before this court pursuant to 28 U.S.C. §§ 1331 and 1343.

#### Standard of Review

A party is entitled to summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). On a motion for summary judgment, the movant has the initial burden of showing the

absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2554, 91 L. Ed. 2d 265 (1986). Under Rule 56(e) of the Federal Rules of Civil Procedure, the burden then shifts to the non-movant to "go beyond the pleadings and by . . . affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp., 477 U.S. at 324, 106 S. Ct. at 2553, 91 L. Ed. 2d at 274. Before finding that no genuine issue for trial exists, the court must first be satisfied that no rational trier of fact could find for the non-movant. Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538, 552 (1986).

### Analysis

To properly plead a cause of action under § 1983, a plaintiff must allege that an individual acting under color of state law has deprived him of a federal right. It is uncontested that Taylor is a "state actor" for purposes of the present case. Thus, examination of the second prong – deprivation of a federal right – is the only analysis necessary.

### **I. Equal Protection**

To establish an equal protection claim, the plaintiffs must show that the defendants treated them differently than other non-blacks in depriving them of their property rights, and that the disparate treatment was intentional. *See Nat'l Ass'n of Gov't Employees v. City Public Serv. Bd.*, 40 F.3d 698, 714-15 (5<sup>th</sup> Cir. 1994) ("To prove a cause of action under section 1983 based on a violation of equal protection, Plaintiffs are required, as under section 1981, to demonstrate intentional discrimination; mere disparate impact will not suffice.")

The plaintiffs allege that Taylor uttered a racial epithet in their presence at the chancery clerk's office when they attempted to present receipts from the tax assessor for the 1994 *ad valorem* taxes they paid in 1995. Taylor unequivocally denies this allegation. The plaintiffs assert that discriminatory intent may be inferred from the alleged usage of this racial epithet and that Taylor deprived them of their property rights because of their race. Further attempting to establish the element of intent, the plaintiffs point to excerpts from Taylor's deposition testimony wherein he admits to the possibility of his usage of

the term as a child in Memphis, Tennessee.

The plaintiffs cite Brown v. East Mississippi Elect. Power Ass'n, 989 F.2d 858, 861 (5<sup>th</sup> Cir. 1993), and Moss v. Ole South Real Estate, Inc., 933 F.2d 1300, 1313 (5<sup>th</sup> Cir. 1991), in support of their proposition that use of the racial epithet claimed here can be accepted as evidence of Taylor's intent and discriminatory animus. The plaintiffs fail to note, however, that evidence of disparate treatment of non-blacks was present in both of these cases. The cited authority is, therefore, distinguishable from the present case; for here the record is completely devoid of any evidence that blacks were treated differently than non-blacks regarding tax sales, property redemption, the refunding of monies paid for taxes, or any other matter involving the Marshall County Chancery Clerk's Office.

Even Alexander testified to this fact. The following exchange took place during Alexander's deposition:

Mr. O'Donnell: Okay. But my question was, though, what information do you have to share with me today about whether Mr. Taylor treated white people differently than you on these types of transactions?

Alexander: The information – I have no information on those kind, because that's the only transaction I've had with him. And as to, you know, was he – if he treats white people in that manner, then he's treating them like they less than dirt, but I can't say as to how he treats white people or other black people, as far as that's concerned.

Further, it is uncontested that Taylor awarded Alexander tax deeds on parcels of property that were not redeemed within the statutory period. This fact tends to indicate that Taylor had no intention to deny the plaintiffs equal protection under the laws of the state of Mississippi. The court finds no evidence that the defendant treated the plaintiffs differently than non-blacks in the carrying out of his official acts as the chancery court clerk.

Likewise, the court finds no evidence of an intent to discriminate. The court is unconvinced of any connection between Taylor's alleged use of a racial epithet and the plaintiffs' alleged property deprivation. The alleged usage of the term and the subsequent denial of the plaintiffs' refund are too remote for such a connection. Further, assuming arguendo that Taylor did, in fact, use the term and that he does, in fact, maintain racist beliefs and attitudes, the plaintiffs are, nevertheless, unable to establish a

claim for violation of equal protection because they have failed to show any evidence that they were treated differently than non-blacks. Because the court finds the record totally lacking of any evidence of disparate treatment and any relevant evidence of Taylor's alleged intent to discriminate on the basis of race, the plaintiffs' equal protection claims must be dismissed.

## **II. Due Process**

The plaintiffs also assert that the defendants deprived them of property without affording them due process of law. The defendants do not dispute that the plaintiffs have a property interest in the monies they tendered for the payment of the *ad valorem* taxes at issue. They do dispute, however, that they deprived the plaintiffs of this property interest. The defendants point to the plaintiffs' reliance on an outdated statute as the source of their mistaken belief that the chancery clerk has deprived them of their property interest.

Whether the plaintiffs have presented a cognizable violation of their fourteenth amendment right to procedural due process requires a dual inquiry: were they "deprived of a protected property interest and, if so, was the deprivation accomplished without adherence to due process minimums?" Findeisen v. North East Indep. Sch. Dist., 749 F.2d 234, 237 (5<sup>th</sup> Cir. 1984).

It is unnecessary for this court to determine whether an incorrect form of the statute was applied and whether a deprivation occurred, because even if such is the case, the plaintiffs must still show that they were denied due process. "The core guarantee of procedural due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" Findeisen, 749 F.2d at 237 (quoting Armstrong v. Manzo, 380 U.S. 545, 552, 85 S. Ct. 1187, 1191, 14 L. Ed. 2d 62 (1965)). Applying what is known as the *Parratt/Hudson* doctrine, the Fifth Circuit has held that "due process [does] not necessarily mandate a pre-deprivation hearing when an available post-deprivation state tort remedy

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<sup>1</sup>In Parratt v. Taylor, 451 U.S. 527, 101 S. Ct. 1908, 68 L. Ed. 2d 420 (1981), and Hudson v. Palmer, 468 U.S. 517 (1984), the Court held that a state actor's random and unauthorized deprivation of a plaintiff's property does not result in a violation of procedural due process rights if the state

provided adequate redress."<sup>1</sup> Id. at 238.

In the present case, Mississippi statutes provide the plaintiffs with adequate post-deprivation remedies and the process they are due under the law. Pursuant to Miss. Code Ann. § 27-45-27, the amounts paid for taxes on the land after its sale for delinquent taxes are a lien on the land in favor of the purchaser. *See* Op. Att'y Gen. No. 93-0501, Hollimon, Sept. 8, 1993. The plaintiffs are entitled to enforce their lien through a bill in chancery. The plaintiffs may also, as they have done here, seek a writ of mandamus. While this court declines to issue such a writ in the present case, instead reserving that determination for a state forum, the existence and adequacy of the remedy precludes a cognizable claim for violation of due process.

The U.S. Supreme Court has stated that "[h]istorically, this guarantee of due process has been applied to deliberate decisions of government officials to deprive a person of life, liberty, or property." Daniels v. Williams, 474 U.S. 327, 331, 106 S. Ct. 662, 665 (U.S. 1986). While Taylor may have made a "deliberate decision" in his refusal to refund monies or to issue tax deeds on the parcels of property in question, it is clear that this decision, if in fact it was the wrong one, was made through, at worst, Taylor's negligence. "Where a government official's act causing injury to life, liberty, or property is merely negligent, 'no procedure for compensation is constitutionally required.'" Daniels, 474 U.S. at 333, 106 S. Ct. at 666 (quoting Parratt v. Taylor, 451 U.S. 527, 548 101 S. Ct. 1908, 1919, 68 L.

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provides an adequate post-deprivation remedy. The plaintiffs argue that the doctrine does not apply in the present case because Taylor's act was not "random and unauthorized." *See Alexander v. Ieyoub*, 62 F.2d 709, 712 (5<sup>th</sup> Cir. 1995)(holding that state officials could not characterize their conduct as random and unauthorized if the state had "delegated to them the power and authority to effect the very deprivation complained of")(quoting Zinermon v. Burch, 494 U.S. 113, 138 (1990)). The plaintiffs' argument on this point runs contrary to their claims that Taylor violated a state statute thereby depriving them of their property interest without due process. An essential element of the plaintiffs' position logically must be that the state did *not* delegate to Taylor "the power and authority to effect the very deprivation complained of." According to the plaintiffs, Taylor exceeded and/or abused his power and authority. The court is unpersuaded that the *Parratt/Hudson* doctrine is inapplicable in the present case.

Ed. 2d 420 (1981)(Powell, J., concurring in result)).

It is uncontested that Taylor sought, though informally, the advice of at least one attorney and former chancellor regarding the matter. Taylor testified that he reads attorney general opinions frequently and that he attempts to stay well-informed on the law as it applies to chancery matters.

Further, it is important to note that an applicable statute, Miss. Code Ann. § 27-45-3, was amended between the date the plaintiffs purchased the subject parcels of property at the tax sale and the date they paid the 1994 taxes on the property. Section 27-45-3 outlines the procedure necessary for redemption of property by the record owners. Prior to March 27, 1995, a relevant portion of the statute required that the redeeming landowner pay to the chancery clerk "all taxes and costs that have accrued on the land since the sale. . . ." The statute was amended, effective March 27, 1995, to exclude the word "taxes" from this sentence. The Mississippi Attorney General has interpreted the amendment as having "deleted the requirement that the redeemer pay all taxes accruing on the land since the sale." Op. Att'y Gen. No. 2002-0267, McGee, May 17, 2002. Taylor testified as to his understanding that he was no longer required to collect these taxes from the redeeming landowners, that he would have no record that the plaintiffs paid these taxes, and that it was not his responsibility to refund the plaintiffs. The attorney general's office has further opined that the amendment applies only to matters regarding tax sales which occurred after March 27, 1995. Op. Att'y Gen. No. 95-0459, James, Aug. 31, 1995. The subject tax sale in the present case occurred prior to this date, though the taxes at issue were paid subsequent to it. Without interpreting the Mississippi statute at issue, the court finds that the timing of the amendment and the confusion surrounding Taylor's duties in regard to the subject tax monies and deeds preclude a determination that Taylor was deliberately indifferent to the constitutional rights of the plaintiffs. Taylor's actions, at worst, were merely negligent or an incorrect interpretation of a new statute after following the advice of an attorney and chancery judge.

### Conclusion

For the forgoing reasons, the court finds no violation of the plaintiffs' rights to due process. As the court has also found no violation of the plaintiffs' rights to equal protection, the plaintiffs' claims under 42 U.S.C. § 1983 must be dismissed. With the elimination of these claims, the jurisdictional basis for the pendent state law claims disappears, and they too must be dismissed. McKee v. City of Rockwall, Tex., 877 F.2d 409, 416 (5<sup>th</sup> Cir. 1989). An order in accord with this opinion shall issue simultaneously herewith.

This, the \_\_\_\_ day of January, 2003.

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**NEAL B. BIGGERS, JR.**  
**SENIOR U.S. DISTRICT JUDGE**

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**ORDER**

In accordance with the memorandum opinion issued simultaneously herewith, it is **ORDERED**  
**AND ADJUDGED** that the defendants' motion for summary judgment is **GRANTED** as to the  
plaintiffs' federal claims. The plaintiffs' state claims are **DISMISSED without prejudice**.

Defendants' motion *in limine* is **DENIED as moot**.

This, the \_\_\_\_\_ day of January, 2003.

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**NEAL B. BIGGERS, JR.**  
**SENIOR U.S. DISTRICT JUDGE**